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THE PRINCIPLE IN WEISZ'S CASE

by

S. VENKATARAMAN.

The decision in *Weisz's case*[1] is of great value even outside the country where it was rendered. It breaks new ground. It brings to light a new aspect of the law of contempt. It holds that disguising a cause of action so as to conceal its true nature from the Court is a contempt of Court. Hactor, Macdonald and Co. were a firm of book-makers. Weisz claimed that a sum of £ 380 was due from them to him in respect of bets laid with them. The company denied liability. Tattersall's Committee, the recognised tribunal in England for settling disputes arising out of betting decided in favour of the company. Thereupon Weisz consulted Martin, a solicitor of the firm of Campbell Hooper and Todd, with a view to bring an action for the recovery of the amount from the book-makers. Martin advised that the action was not maintainable at law. Weisz was however insistent about bringing the action. He hoped that the threat of publicity would induce the book-makers to pay. Even if they did not, he wanted " to show them up ". Martin was reluctant to offend his client by declining to act. So he sent the correspondence to counsel with instructions to settle the endorsement for the writ. On receipt of the endorsement, Martin sent a letter to the book-makers on 18th January, 1951, in the name of the solicitor's firm stating that the firm had been instructed, and as it appeared to be of no use to request payment of the amount, were issuing a writ and asked for the name of their solicitor for acceptance of service. The book-makers did not send any reply. Martin had a writ issued and served on the book-makers. The endorsement ran :

" The plaintiff's claim is for the sum of £ 373-13-4, being the balance found to be due from the defendant to the plaintiff on accounts stated between them in writing and contained in a letter from the plaintiff to the defendant of September 26, 1950. Particulars. 1950 September 26. Balance due by defendant to plaintiff on this date £ 373-13-4.

(*Sd.*) Campbell, Hooper and Todd."

The book-makers applied immediately through their solicitors on 29th January, 1951, for particulars of the claim. Martin's firm wrote back that they would be sent as soon as they were received from counsel. Shortly afterwards the particulars were in fact received from counsel. The particulars did not attempt to conceal or disguise the nature of the claim and disclosed that the debt related to betting transactions. Counsel had also intimated his opinion that the particulars were fatal to Weisz's claim and would lead to their being struck out by the Court. Counsel

1. *R.* v. *Weisz* (1951) 2 All E.R. 408.

had added : " Mr. Weisz probably knows this as well as a lawyer ". The particulars thus received were not however sent by Martin's firm to the defendant's solicitors ; and after some time, on February 26, the defendant's solicitor issued and served a summons of application asking for particulars returnable on 7th March. On 6th March, notice of discontinuance of the claim was served. Thereupon an application charging Weisz and Martin with contempt of Court was taken out.

The Gaming Act of 1845 (8 and 9 Victoria, ch. 9) prohibits actions for recovery of moneys alleged to be won on bets. In *Phillips* v. *Copping*[1], it was decided that if *A* sues *B* for money won at betting it is the duty of the Court to refuse to give judgment for him as soon as it appears that the action is one prohibited by the Gaming Acts, whether or not the Acts had been pleaded. There were, however, a number of occasions when resort had been had to the type of endorsement used in *Weisz's case*, for the recovery of moneys won at betting and no objection to such a practice had been taken. Certain things are however clear. If the action was not contested by the defendant as often happened for fear of publicity, the plaintiff would have got off with it. If the writ had been truthfully endorsed for money won at betting, it would be wholly improper to allow a default judgment to be entered. The difficulty was therefore sought to be surmounted by disguising the character of the claim. There can be no doubt that to countenance such a practice would be altogether mischievous in its results. The policy implicit in the legislation as to gaming that the Courts ought not to be used for recovery of amounts won at betting or gaming would be circumvented and altogether defeated. These considerations notwithstanding, such a practice had in fact obtained and without objection being taken. The decision in *Gugenheim* v. *Ladbroke & Co. Ltd.*[2], adverts to it. In that case, the plaintiff was a person who had made bets in England with the defendants, a firm of book-makers. He claimed that £ 8784 was due to him in respect of those transactions. The defendants had refused to pay on the ground that the plaintiff's name had been reported to the Jockey Club as a defaulter on bets and he had been warned off the course. There were, according to the plaintiff, some negotiations between the parties, as a result of which, he said, the defendants had agreed that a sum of £ 7256 was due to him from them. The plaintiff sued for the recovery of the amount, founding his action on an account stated. It was contended on behalf of the defendants that the action ought to be struck out as frivolous and vexatious and that an action on an account stated which was an account of cross claims in respect of gambling debts was so obviously an account which cannot be sued on in a Court of law that the action should be summarily dismissed. The plaintiff was a foreigner not conversant whith the attitude of English law towards matters of this kind. Lawrence, L.J., held that in view of the numerous cases where amounts really due on betting transactions had been disguised as causes on account stated without objection being raised, the striking off would not be justified. The Lord Justice observed : " The real question which the Court has to decide is whether the rule as to striking out actions which are frivolous and vexatious ought to be applied in this case, and, in my opinion, having regard to the numerous cases which have been decided on betting transactions and agreement which are allowed to have been made and to be legal arising out of betting transactions, this is not the class of case which ought to be struck out as being frivolous or vaxatious ". Tucker, L.J., concurred having regard to the practice referred to and the foreign nationality of the plaintiff. He said : "This is an action brought by a foreign plaintiff against the company trading in this country. Denning, J., and Lawrence, L.J., both think that he should not be driven from the judgment seat before his case had been heard. I make no secret of the fact that I should have come to a different conclusion, but as I think it most undesirable with that amount of judicial difference of opinion, that a plaintiff, especially a foreign plaintiff should not be allowed to bring his case to trial. I am not prepared to dissent from the order suggested by Lawrence, L.J. " In *Weisz's case*, Lord Goddard,

1. (1935) 1 K.B. 15. 2. (1947) 1 All E.R. 292 (C.A.).

C.J., thought that the aforementioned special circumstances must be taken into account in reading the conclusions in *Gugenheim's case*[1] and that the decision ought not to be taken as sanctioning an endorsement which disguises the cause of action so as to conceal its true nature from the Court. The learned Chief Justice observed: "There are many cases to be found in the books in which this endorsement has been used in betting cases and so far there has been at least no reported case in which it has been suggested that such a thing is a contempt, though the actions have been struck out as an abuse of process. Indeed in *Gugenheim* v. *Ladbroke & Co., Ltd.*[1], the Court of Appeal allowed the action to proceed apparently on the ground that the plaintiff was a foreigner who would, they thought, not understand the position and be aggrieved if the action were to be summarily dismissed. , . . . I think that case should be regarded as wholly exceptional. It does appear from its subsequent history, that a very serious issue of fraud had been raised which the foreign plaintiff was anxious to have determined and when the case came for trial before Humphreys, J., the Judge allowed the issue to be left to the jury though he entered judgment for the plaintiff on the ground that it was a betting claim and without regard to the verdict". After thus distinguishing and explaining away the conclusion in *Gugenheim's case*, the learned Chief Justice went on to state: "The very fact that on many occasions resort has been had to this particular form of endorsement in cases which are brought simply for the recovery of money won at betting or gaming is what gives importance to the present motion. It is time that this practice should be stopped and in no uncertain manner".

As to whether the practice amounts to contempt of Court, early decisions afford a pointer in that direction though there is no case where the matter had come up for decision directly. *Coxe* v. *Phillips*[2], was a case of "fob action to learn the opinion of the Court" on a particular question. In that case, the defendant a woman had married one Muilman, a London merchant. She was at that time already married and that marriage was subsisting. The marriage with Muilman was on that account declared to be null and void by the Spiritual Court. Sometime later, Muilman took another wife. Thereafter the defendant Phillips filed a suit in the Eccleciastical Court to abrogate the nullity decree on the ground that the man to whom she had been originally married had himself a wife alive at that time and was living with her, so much so her marriage with him was not valid and she was therefore in a position to contract a valid marriage with Muilman. During the pendency of this suit one Coxe brought a suit against the defendant Phillips on a promissory note executed by her seeking recovery of the amount alleged to be due thereunder. Phillips pleaded her marriage with Muilman in answer to the claim against her. On Coxe replying that her marriage with Muilman was not valid and therefore cannot be pleaded, she rejoined it was good as her original marriage was not a valid marriage. Muilman intervened and contended that Coxe's action was a put up affair, that it was a fictitious suit connived between him and the defendant Phillips with a view to burden Muilman with liabilities and to impose on the Court. The connivance was found to be true. Lord Hardwicke, C.J., observed: "Now this is a mere fictitious action, not to determine a right or controversy, but to deceive the Court, and raise an evil fame of Muilman; and surely that cannot be said to be of no offence. That such practices are not lawful is plain . . . . and I cannot see how there can be a stronger instance than the present; and it is incumbent on Courts of Justice to keep the streams of justice clear or they will be made use of as means of scandal. . . . . . . Upon the whole matter the Court thought this a contempt, even though the action were upon a real demand; because it had been made an ill use of and therefore ordered that the plaintiff and defendant and one Hudson who was the acting Attorney for both should stand committed." The decision establishes that to bring an action in deceit of the Court will be contempt. Another case which throws light on the question is *Re Elsam*[3]. Elsam was an attorney and he had a special case stated for the opinion

1. (1947) 1 All E.R. 292 (C.A.).
2. (1736) Lee temp. Hard 237 : 95 E.R. 152.
3. (1824) 3 B. & C. 597 : 107 E.R. 855.

of the Court. A great part of the statement was however fictitious. Abbot, C.J., said : " It is impossible to pass over a case of this kind without notice but as it appears that the party before the Court did not intend any fraud, and that he has already incurred an expense of £ 40 in the course of these proceedings, the object of the Court which is to prevent the repetition of such a practice in future, will be answered by ordering him to pay a fine of £40 and to be imprisoned till that fine be paid ". It is thus clear that even if no fraud against the Court was meant, it would still amount to contempt if the action was fictitious. Good faith will hardly serve as an excuse in such a case. In *Lindwood* v. *Andrews*[1], a barrister appearing for the defendant in an action was found to have wilfully deceived the Court by procuring the party to make an affidavit he knew to be untrue and reading it to the Court. It was held that it was an abuse of process and was punishable as contempt. Here, it was counsel that was acting contrary to the code of conduct expected of him and not the party. The intention to deceive was also found. Also, the suit was not one disguising the cause of action.

In *Weisz's case*, it was found by the Court that there was no intention to deceive the Court and that the true nature of the claim was disguised as it was one prohibited by the statute. Still inasmuch as the action was on a feigned issue so as to hide from the Court the true nature of the action it amounted to contempt. Lord Goddard, C.J., observed : " It is necessary to emphasise that the contempt in the present case lies, not in bringing an action forbidden by the Gaming Acts, but in bringing it as a feigned issue so as to conceal its true nature from the Court. . . . . . Had the writ been endorsed for moneys due to the plaintiff on bets won by him the action would have been struck out, but it would not have amounted to contempt ". His Lordship added finally : " We hope . . . . that counsel as well as solicitors will always bear in mind that they owe a duty to the Court as well as to their clients, and that a main object in requiring the signature of a counsel or solicitor to pleadings settled by them is to prevent issues, whether called feigned or fictitious being presented to the Court ".

Contempt of Court is essentially a foreign concept. It came to India with the British. The exposition in *Weisz's case* has thus value not merely in the United Kingdom but in our country as well.

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1. (1888) 58 L.T. 612.